

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

DAVID HUFFMAN,

Petitioner,

v.

Case No. 8:21-cv-620-WFJ-AEP

SECRETARY, DEPARTMENT
OF CORRECTIONS,

Respondent.

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ORDER


Before the Court is Respondent’s Motion to Dismiss Petition (Doc. 8), which Mr. Huffman opposes (Doc. 11). Respondent argues that all claims in the petition should be dismissed because they are unexhausted. Mr. Huffman argues that exhaustion should be excused because “there is an absence of available State corrective process.” See 28 U.S.C. § 2254(b)(1)(B). Specifically, he argues he should be excused from exhausting his state remedies (regarding his ineffective assistance of counsel claims) because: 1) both the state circuit court and the Florida Second District Court of Appeal have orders directing their respective clerks of the court to reject for filing all post-conviction motions, notices of appeal, and petitions for extraordinary relief arising out of Mr. Huffman’s 1986 convictions; and 2) the state circuit court has taken no action on his post-conviction motion filed in May 2020.

“The ‘absence of available State corrective process’ or ‘circumstances ... that

render such process ineffective to protect the [petitioner's] rights,' may excuse a petition [sic] from having to exhaust his state remedies." *Horn v. Inch*, 2020 WL 6121485, at *3 (N.D. Fla. Sept. 15, 2020), *report and recommendation adopted*, 2020 WL 6121156 (N.D. Fla. Oct. 16, 2020), *appeal dismissed sub nom. Horn v. Sec'y, Fla. Dep't of Corr.*, 2021 WL 1608744 (11th Cir. Mar. 24, 2021) (quoting 28 U.S.C. § 2254(b)(1)(B)) (alteration in original). Mr. Huffman alleges at least a colorable claim that there is an absence of an available State corrective process to exhaust his ineffective assistance of counsel claims.

Accordingly, not later than November 24, 2021, Respondent must reply to Mr. Huffman's assertion that exhaustion of state remedies should be excused because there is an absence of available State corrective process. A ruling on Respondent's Motion to Dismiss Petition (Doc. 8) is **DEFERRED** until after the reply is filed and served.

ORDERED in Tampa, Florida, on November 4, 2021.



WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

cc: David Huffman, *pro se*
Counsel of Record